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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,
et al.,

Plaintiffs,

V.

PRESIDENT DONALD TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants

Case No. 3:25-cv-03698-SI

**BRIEF OF CONSTITUTIONAL
ACCOUNTABILITY CENTER AS
AMICUS CURIAE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER**

Date: May 9, 2025

Time: 10:30 a.m. (PDT)

Place: Courtroom 1, 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Judge: Honorable Susan Illston

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. The Authority to Create, Restructure, and Abolish Federal Departments and Agencies Belongs to Congress	3
II. As Historical Practice Demonstrates, When Congress Wants to Give the President Authority to Reorganize the Executive Branch, It Does So Through Legislation.....	10
CONCLUSION.....	14

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Bowsher v. Synar</i> , 478 U.S. 714 (1986)	14
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976)	4
<i>Free Ent. Fund v. PCAOB</i> , 561 U.S. 477 (2010)	1, 3
<i>INS v. Chadha</i> , 462 U.S. 919 (1983)	9, 13
<i>La. Pub. Serv. Comm'n v. FCC</i> , 476 U.S. 355 (1986)	6
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	9
<i>Myers v. United States</i> , 272 U.S. 52 (1926)	4
<i>Nat'l Ass'n of Greeting Card Publishers v. U.S. Postal Serv.</i> , 462 U.S. 810 (1983)	8
<i>NFIB v. OSHA</i> , 595 U.S. 109 (2022)	4, 6
<i>NLRB v. Noel Canning</i> , 573 U.S. 513 (2014)	9
<i>The Pocket Veto Case</i> , 279 U.S. 655 (1929)	9
<i>United States v. Midwest Oil Co.</i> , 236 U.S. 459 (1915)	9
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579 (1952)	3, 9

TABLE OF AUTHORITIES – cont'd

Page(s)

3		
4	<u>CONSTITUTIONAL PROVISIONS</u>	
5	U.S. Const. art. I, § 1	1, 3
6	U.S. Const. art. I, § 8, cl. 18.....	4
7	U.S. Const. art. II, § 2, cl. 2	4
8		
9	<u>LEGISLATIVE MATERIALS</u>	
10	Act of July 27, 1789, ch. 4, 1 Stat. 28.....	4, 5
11	Act of Aug. 7, 1789, ch. 7, 1 Stat. 49.....	4, 5
12	Act of Sept. 2, 1789, ch. 12, 1 Stat. 65	4, 5
13	Act of Sept. 11, 1789, ch. 13, 1 Stat. 67	5
14	Act of Sept. 15, 1789, ch. 14, 1 Stat. 68	6
15	Act of Apr. 25, 1812, ch. 68, 2 Stat. 716	6
16	Act of July 4, 1836, ch. 352, 5 Stat. 107.....	7
17	Act of July 4, 1836, ch. 357, 5 Stat. 117.....	7
18	Act of Mar. 3, 1849, ch. 108, 9 Stat. 395.....	5, 7
19	Act of June 22, 1870, ch. 150, 16 Stat. 162	5
20	Act of June 30, 1932, Pub. L. No. 72-212, 47 Stat. 382.....	11
21	Act of Mar. 3, 1933, Pub. L. No. 72-428, tit. IV, 47 Stat. 1489	12
22	Act of Oct. 19, 1984, Pub. L. 98-532, 98 Stat. 2705	13
23	Act to Regulate Commerce, ch. 104, 24 Stat. 379 (1887)	5
24	75 Cong. Rec. (1932)	11
25		
26	83 Cong. Rec. (1938)	12
27		
28		

TABLE OF AUTHORITIES – cont'd

Page(s)		
3	Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103-354, tit. II, 108 Stat. 3178.....	8
4		
5	Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, tit.	
6	III, 124 Stat. 1520 (2010)	8
7		
8	Energy Reorganization Act of 1974, Pub. L. No. 93-438, 88 Stat. 1233	9
9		
10	Henry B. Hogue, Cong. Rsch. Serv., R42852, <i>Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress</i> (2012).....	10-14
11		
12	Henry B. Hogue, Cong. Rsch. Serv., R47897, <i>Abolishing a Federal Agency: The Interstate Commerce Commission</i> (2024)	6, 7
13		
14	Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135	8
15		
16	H.R. Rep. No. 91-1104 (1970).....	8
17		
18	ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 903	7
19		
20	Postal Reorganization Act, Pub. L. 91-375, 84 Stat. 719 (1970).....	8
21		
22	Reorganization Act of 1939, Pub. L. No. 76-19, 53 Stat. 561	12, 13
23		
24	Reorganization Act of 1945, Pub. L. No. 79-263, 59 Stat. 613	13
25		
26	Reorganization Act of 1949, Pub. L. No. 81-109, 63 Stat. 203.....	13
27		
28	Reorganization Act of 1977, Pub. L. No. 95-17, 91 Stat. 29	13
	Reorganization Act Amendments of 1984, Pub. L. No. 98-614, 98 Stat. 3192.....	13
23	5 U.S.C. § 901	2, 13
24		
25	5 U.S.C. § 902.....	2, 13
26		
27	5 U.S.C. § 903.....	2, 13
28		
25	5 U.S.C. § 904.....	2, 13
26		
27	5 U.S.C. § 905.....	2, 13
28		

TABLE OF AUTHORITIES – cont'd

	Page(s)
5 U.S.C. § 906.....	2, 13
5 U.S.C. § 907.....	2, 13
5 U.S.C. § 908.....	2, 13
5 U.S.C. § 909.....	2, 13
5 U.S.C. § 910.....	2, 13
5 U.S.C. § 911.....	2, 13
5 U.S.C. § 912.....	2, 13
6 U.S.C. § 111.....	6
6 U.S.C. § 291.....	8
12 U.S.C. § 5413.....	8
20 U.S.C. § 3411.....	6
20 U.S.C. § 3441.....	10
21 U.S.C. § 393.....	6
42 U.S.C. § 901.....	6
51 U.S.C. § 20111.....	6
 <u>EXECUTIVE BRANCH MATERIALS</u>	
Comprehensive Plan for Reorganizing the Executive Branch, Exec. Order No. 13,781, 82 Fed. Reg. 13959 (Mar. 13, 2017).....	2, 14
Exec. Order No. 14,210, 90 Fed. Reg. 9669 (Feb. 11, 2025)	3
Reorganization Plan No. 1 of 1953, <i>in</i> 67 Stat. 631	10
Reorganization Plan No. 3 of 1970, <i>in</i> 84 Stat. 2086	10

TABLE OF AUTHORITIES – cont'd

Page(s)	
10	Reorganization Plan No. 3 of 1978, <i>in 92 Stat.</i> 3788
11	Statement About Congressional Action on Reorganization of the Executive Branch (Feb. 24, 1932), <i>in Public Papers of the Presidents of the United States: Herbert Hoover</i> 74 (U.S. Gov't Printing Off., Wash. 1977)
11	Statement About Signing the "Economy Act" (June 30, 1932), <i>in Public Papers of the Presidents of the United States: Herbert Hoover</i> 283 (U.S. Gov't Printing Off., Wash. 1977)
 <u>BOOKS, ARTICLES, AND OTHER AUTHORITIES</u> 	
5-7	Paul Stephen Dempsey, <i>The Rise and Fall of the Interstate Commerce Commission: The Tortuous Path from Regulation to Deregulation of America's Infrastructure</i> , 95 Marq. L. Rev. 1151 (2012)
5, 6	Robert L. Rabin, <i>Federal Regulation in Historical Perspective</i> , 38 Stan. L. Rev. 1189 (1986)
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INTEREST OF AMICUS CURIAE¹

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution’s text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights, freedoms, and structural safeguards that it guarantees. CAC accordingly has an interest in this case and the questions it raises about our Constitution’s separation of powers.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress—not the President—“has plenary control over the . . . existence of executive offices.” *Free Ent. Fund v. PCAOB*, 561 U.S. 477, 500 (2010). Thus, any action to create, restructure, or eliminate a federal agency must stem from an act of Congress. Though Congress may temporarily delegate this authority to the President—subject, of course, to appropriate restraints—the President lacks the power to unilaterally reorganize a government agency in the absence of such a delegation.

Congress's authority over the structure of the federal government is grounded in Article I, which vests “[a]ll legislative Powers” in Congress. U.S. Const. art. I, § 1. With these powers, Congress has created, restructured, and eliminated executive departments and agencies since the Founding. Among Congress's first statutes were those creating the Departments of Treasury, War, and Foreign Affairs. As the nation grew and faced new challenges, Congress established different departments, agencies, and offices to address them. And in response to changing conditions, Congress has at times reorganized and eliminated executive agencies to ensure that the executive

¹ No person or entity other than *amicus* and its counsel assisted in or made a monetary contribution to the preparation or submission of this brief. All parties consent to the filing of this brief.

1 branch can meet the needs of the American people in an efficient manner. Critically, all of these
 2 actions to restructure the executive branch have been accomplished through legislation passed by
 3 Congress and signed into law by the President.

4 That the power to reorganize the executive branch belongs to Congress is underscored by
 5 the fact that when Presidents have reorganized the executive branch, they have always done so
 6 pursuant to congressional delegations of that power—delegations made through legislation and
 7 subject to appropriate restraints. Throughout the twentieth century, Congress passed statutes
 8 called Reorganization Acts. *See, e.g.*, 5 U.S.C. §§ 901-12. These Acts, which always had
 9 expiration dates, authorized the President to make substantial changes to the executive branch that
 10 could not be accomplished through ordinary discretionary actions like modifying internal
 11 operations, managing federal employees, and determining policy priorities. The reorganizations
 12 authorized by these Acts ranged from creating and abolishing certain agencies to consolidating the
 13 statutory functions of various agencies. *Id.* § 902(2). The history of the Reorganization Acts
 14 demonstrates that when Congress wants to give the President the power to reorganize the executive
 15 branch or abolish agencies, it knows how to do so.

16 Congressionally authorized reorganization authority came to an end in 1984. Since then,
 17 Congress has repeatedly denied requests from Presidents across the political spectrum to renew
 18 it—including from President Trump during his first term. *See* Comprehensive Plan for
 19 Reorganizing the Executive Branch, Exec. Order No. 13,781, 82 Fed. Reg. 13959 (Mar. 13, 2017)
 20 (ordering OMB to create a report with reorganization recommendations while acknowledging the
 21 need for congressional approval).

22 This time, President Trump decided that he would not take no for an answer. Rather than
 23 ask Congress for reorganization authority, he chose to unilaterally effectuate “a critical
 24

1 transformation of the Federal bureaucracy” by eliminating what he deemed “waste, bloat, and
 2 insularity” in the federal government’s structure. Exec. Order No. 14,210, 90 Fed. Reg. 9669 (Feb.
 3 11, 2025).

4 That is not how it works. As the Supreme Court made clear half-a-century ago, “[t]he
 5 President’s power, if any, to issue [an] order must stem either from an act of Congress or from the
 6 Constitution itself.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). When
 7 it comes to reorganizing the federal government, the President enjoys no constitutional authority
 8 “except for recommendation and veto,” *id.* at 655 (Jackson, J., concurring)—his limited roles in
 9 the lawmaking process. And not only has Congress declined to delegate to President Trump the
 10 reorganization power that it delegated to some prior Presidents through Reorganization Acts, it has
 11 affirmatively enacted countless statutes mandating the existence of federal agencies that Trump
 12 now seeks to fundamentally restructure to the point of dismantlement. Thus, Defendants’ efforts
 13 to unilaterally reorganize the federal government are “incompatible with the expressed or implied
 14 will of Congress.” *Id.* at 637. This Court should grant Plaintiffs’ motion for a temporary
 15 restraining order and put an end to this destruction of the federal government’s infrastructure by
 16 executive fiat.

20 ARGUMENT

21 I. The Authority to Create, Restructure, and Abolish Federal Departments and 22 Agencies Belongs to Congress.

23 A. The Constitution provides that “[a]ll legislative Powers,” U.S. Const. art. I, § 1,
 24 including “plenary control over the . . . existence of executive offices,” *Free Ent. Fund*, 561 U.S.
 25 at 500, “shall be vested in a Congress of the United States,” U.S. Const. art. I, § 1. It also grants
 26 Congress the exclusive power to “carr[y] into Execution” not only the “foregoing Powers” under
 27 Article I, Section 8, but also “all other Powers vested by this Constitution in the Government of

1 the United States, or in any Department or Officer thereof.” U.S. Const. art. I, § 8, cl. 18. By
 2 referencing the Vesting Clauses of Article II and Article III, this affirmative textual grant of
 3 congressional power “undoubtedly” authorizes Congress to pass laws creating executive
 4 departments, agencies, and offices. *Buckley v. Valeo*, 424 U.S. 1, 138 (1976); *see* U.S. Const. art.
 5 II, § 2, cl. 2 (granting Congress the authority to establish offices “by Law”); *Myers v. United States*,
 6 272 U.S. 52, 129 (1926) (“To Congress under its legislative power is given the establishment of
 7 offices [and] the determination of their functions and jurisdiction.”). Agencies are thus “creatures
 8 of statute,” *NFIB v. OSHA*, 595 U.S. 109, 117 (2022) (per curiam), and Congress has plenary
 9 authority over the structure of the federal government.

10 With that plenary authority comes substantial flexibility. Indeed, the Framers rejected a
 11 plan to delineate in the Constitution the specific departments of the executive branch and their
 12 duties, choosing instead to give Congress the power to create those departments through the
 13 legislative process. *See* 2 *Records of the Federal Convention of 1787*, at 335-36 (Max Farrand
 14 ed., 1911). The First Congress promptly exercised that power, recognizing that executive
 15 departments would be essential to a functional government. Thus, some of the first statutes
 16 Congress passed were those establishing executive departments, including the Department of
 17 Treasury, Act of Sept. 2, 1789, ch. 12, § 1, 1 Stat. 65, 65; the Department of War, Act of Aug. 7,
 18 1789, ch. 7, § 1, 1 Stat. 49, 49-50; and the Department of Foreign Affairs, Act of July 27, 1789,
 19 ch. 4, § 1, 1 Stat. 28, 28-29.

20 To ensure that these departments could function as envisioned, the First Congress gave
 21 some of them specifically delineated responsibilities, while instructing others simply to execute
 22 the duties the President assigned them. For example, Congress required the Treasury Secretary to
 23 “digest and prepare plans for the improvement and management of the revenue . . . ; to prepare
 24

1 and report estimates of the public revenue, and the public expenditures . . . and generally to perform
 2 all such services relative to . . . finances.” Act of Sept. 2, 1789, § 2, 1 Stat. at 65-66. By contrast,
 3 Congress authorized the Secretaries of War and Foreign Affairs to “perform and execute such
 4 duties as shall from time to time be enjoined on or intrusted to him by the President.” Act of July
 5 27, 1789, § 1, 1 Stat. at 29; *see* Act of Aug. 7, 1789, §1, 1 Stat. at 50 (similar). And whatever the
 6 scope of their statutorily designated responsibilities, Congress ensured that these departments
 7 could hire the staff they needed to accomplish their work. *See* Act of Sept. 11, 1789, ch. 13, § 2,
 8 1 Stat. 67, 68 (“the heads of the [Treasury, State, and War] departments . . . shall appoint such
 9 clerks therein respectively as they shall find necessary”). Over the next several decades, Congress
 10 created additional executive departments to meet the fledgling nation’s new needs. *See, e.g.*, Act
 11 of Mar. 3, 1849, ch. 108, § 1, 9 Stat. 395, 395 (Interior Department); Act of June 22, 1870, ch. 150,
 12 § 1, 16 Stat. 162, 162 (Justice Department).

15 Congress’s power over the structure of the federal government extends beyond the
 16 establishment of executive departments to the creation of agencies to address the nation’s most
 17 pressing problems. In 1887, Congress created the first regulatory agency: the Interstate Commerce
 18 Commission (ICC). *See* Act to Regulate Commerce, ch. 104, § 11, 24 Stat. 379, 383 (1887).
 19 Railroads were “central[] . . . to the national economy in the post-Civil War period,” Robert L.
 20 Rabin, *Federal Regulation in Historical Perspective*, 38 Stan. L. Rev. 1189, 1197 (1986), but with
 21 this booming industry came considerable challenges, including “[r]uinous rate wars,” “price fixing
 22 and pooling agreements,” and “onerous” working conditions, Paul Stephen Dempsey, *The Rise*
 23 *and Fall of the Interstate Commerce Commission: The Tortuous Path from Regulation to*
 24 *Deregulation of America’s Infrastructure*, 95 Marq. L. Rev. 1151, 1155-56, 1159 (2012). Because
 25 states were unable to address these problems themselves, a national solution was needed. *See*
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1 Rabin, *supra*, at 1206. Congress thus created the ICC to “regulate the rates and practices of the
 2 railroads,” Dempsey, *supra*, at 1152, giving it the power to receive and investigate complaints
 3 about rail carriers and issue orders if it found rates to be unjust or unreasonable, *see* Henry B.
 4 Hogue, Cong. Rsch. Serv., R47897, *Abolishing a Federal Agency: The Interstate Commerce*
 5 *Commission* 4 (2024) [hereinafter Hogue, *ICC*].
 6

7 In the years since, Congress has repeatedly created other agencies and departments,
 8 including the Department of Education, 20 U.S.C. § 3411; the Department of Homeland Security,
 9 6 U.S.C. § 111(a); the Food and Drug Administration, 21 U.S.C. § 393(a); the Social Security
 10 Administration, 42 U.S.C. § 901(a); and the National Aeronautics and Space Administration
 11 (NASA), 51 U.S.C. § 20111(a). The creation of each of these departments and agencies reflected
 12 Congress’s judgment about the proper means to respond to a unique moment in history, provide a
 13 public service, or effectuate a policy. Each agency’s powers are prescribed by “the authority that
 14 Congress has provided” through statute. *NFIB*, 595 U.S. at 665. In other words, “an agency
 15 literally has no power to act . . . unless and until Congress confers power upon it.” *La. Pub. Serv.*
 16 *Comm’n v. FCC*, 476 U.S. 355, 374 (1986).
 17

19 **B.** Congress also has the power to restructure and abolish agencies as it finds necessary,
 20 including by renaming federal agencies, subsuming one federal agency or office within another,
 21 changing an agency’s functions, or eliminating an agency altogether. Indeed, Congress has
 22 exercised this power since its earliest days. *See, e.g.*, Act of Sept. 15, 1789, ch. 14, § 1, 1 Stat. 68,
 23 68 (renaming the “Department of Foreign Affairs” the “Department of State”).
 24

25 In the early nineteenth century, Congress also began creating new offices that were housed
 26 within executive departments and, as necessary, began reassigning and reorganizing their functions
 27 and supervision. *See, e.g.*, Act of Apr. 25, 1812, ch. 68, § 1, 2 Stat. 716, 716 (establishing the
 28

1 General Land Office (GLO) within the Treasury Department); Act of July 4, 1836, ch. 352, §§ 1-
 2 5, 5 Stat. 107, 107-11 (“reorganiz[ing]” the GLO); Act of July 4, 1836, ch. 357, § 1, 5 Stat. 117,
 3 117-18 (establishing the Patent Office within the State Department). Later, when Congress created
 4 the Department of the Interior, it transferred the GLO and the Patent Office from their original
 5 departments to the new Department. Act of Mar. 3, 1849, §§ 2-3, 9 Stat. at 395. Congress also
 6 reassigned certain powers previously exercised by the Secretaries of Treasury, War, and State to
 7 the new Secretary of the Interior. *See id.* §§ 4-7, 9 Stat. at 395-96.

9 Even when past Presidents have called for agencies to be abolished, they have always
 10 recognized that Congress retains the ultimate power to eliminate agencies and transfer their
 11 functions. Consider the history of the ICC. Beginning in the 1970s, as the importance of railways
 12 waned due to cars and interstate highways, railroads became less profitable and “regulation . . .
 13 took the blame.” Dempsey, *supra*, at 1172. In a series of statutes, Congress began limiting the
 14 ICC’s powers, *see id.* at 1173, and Presidents Carter and Reagan appointed ICC Commissioners
 15 “fervently dedicated to deregulation,” *id.* at 1183. Notably, President Reagan pushed to abolish
 16 the ICC and proposed legislation to do so, but Congress did not pass it, so the ICC remained.
 17 Hogue, *ICC*, *supra*, at 18. Then, in 1995, President Clinton and Congress agreed to abolish the
 18 ICC. *See id.* at 19. Congress eliminated the agency by enacting the ICC Termination Act of 1995,
 19 Pub. L. No. 104-88, 109 Stat. 903, which transferred some of its functions to a newly created
 20 Surface Transportation Board and the Department of Transportation, Hogue, *ICC*, *supra*, at 22.

21 The creation of today’s Postal Service is another example of a past President—one hardly
 22 remembered for his submissiveness to Congress—recognizing that the proper means to seek
 23 elimination of an agency is through legislation. In 1970, postal service reform was urgently needed
 24 because, at the time, the nation’s “vast sprawling postal complex [was] heavily overburdened and
 25

1 in deep trouble,” and struggled to “[keep] pace with the advances of the national economy.” H.R.
 2 Rep. No. 91-1104, at 3652-53 (1970). After extensive negotiations about how to change the postal
 3 system, “President Nixon transmitted the proposed legislation to” Congress, *id.* at 3652, and the
 4 reorganization was implemented when “Congress enacted the Postal Reorganization Act,” *Nat'l
 5 Ass'n of Greeting Card Publishers v. U.S. Postal Serv.*, 462 U.S. 810, 813 (1983) (citing Pub. L.
 6 91-375, 84 Stat. 719 (1970)). “The Act abolished the Post Office Department, which since 1789
 7 had administered the nation’s mails. In its place, the Act established the United States Postal
 8 Service as an independent agency.” *Id.* (citations omitted).

9
 10 Congress has reorganized the federal government by abolishing agencies through
 11 legislation more recently as well, often with the goal of increasing agency efficiency. For instance,
 12 when Congress created the Department of Homeland Security in 2002 in response to 9/11, it
 13 abolished the Immigration and Naturalization Service and transferred its functions to the new
 14 Department. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, § 471, 116 Stat. 2135,
 15 2205 (codified at 6 U.S.C. § 291). And when Congress reformed federal oversight of financial
 16 institutions in the wake of the 2008 recession and sought to “streamline and rationalize the
 17 supervision of depository institutions and [their] holding companies,” Dodd-Frank Wall Street
 18 Reform and Consumer Protection Act, Pub. L. No. 111-203, tit. III, § 301, 124 Stat. 1520, 1520
 19 (2010), it abolished the Office of Thrift Supervision, *id.* § 313, 124 Stat. at 1523 (codified at 12
 20 U.S.C. § 5413). Other examples abound. *See, e.g.*, Department of Agriculture Reorganization Act
 21 of 1994, Pub. L. No. 103-354, tit. II, §§ 202, 211, 108 Stat. 3178, 3209 (transferring most of the
 22 functions of offices within the Agriculture Department to the Secretary of Agriculture “to achieve
 23 greater, efficiency, effectiveness, and economies”); Energy Reorganization Act of 1974, Pub. L.
 24 25
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1 No. 93-438, §§ 101, 104(a), 88 Stat. 1233, 1234, 1237 (abolishing the Atomic Energy Commission
 2 and transferring certain functions to a new agency).

3 **C.** This “[l]ong settled and established practice” of Congress using the lawmaking process
 4 to reorganize or eliminate agencies, and receiving due deference from the President, underscores
 5 that the authority to create, restructure, and abolish federal agencies lies with Congress as the
 6 nation’s lawmaking body. *NLRB v. Noel Canning*, 573 U.S. 513, 524 (2014) (“[l]ong settled and
 7 established practice” is entitled to “great weight in a proper interpretation of constitutional
 8 provisions’ regulating the relationship between Congress and the President” (alteration in original)
 9 (quoting *The Pocket Veto Case*, 279 U.S. 655, 689 (1929))); *cf. Loper Bright Enters. v. Raimondo*,
 10 603 U.S. 369, 386 (2024) (“[T]he longstanding practice of the government—like any other
 11 interpretive aid—can inform [a court’s] determination of what the law is.” (quotation marks
 12 omitted)). And that lawmaking process must “be exercised in accord with [the] single, finely
 13 wrought and exhaustively considered, procedure” of bicameralism and presentment that the
 14 Framers selected. *INS v. Chadha*, 462 U.S. 919, 951 (1983). Pursuant to that process, the President
 15 can recommend that Congress create an executive agency, and he can veto a congressional effort
 16 to create one, but he has no power to create or destroy an agency on his own. *See Youngstown*,
 17 343 U.S. at 587 (“The Constitution limits [the President’s] functions in the lawmaking process to
 18 the recommending of laws he thinks wise and the vetoing of laws he thinks bad.”). The
 19 Constitution simply “does not confer upon him any power to enact laws or to suspend or repeal
 20 such as the Congress enacts.” *United States v. Midwest Oil Co.*, 236 U.S. 459, 505 (1915).

21 And that is why if the executive branch seeks authority to reorganize or abolish an agency,
 22 it must get Congress to delegate it that authority through the passage of legislation, as the next
 23 Section explains.
 24

1 **II. As Historical Practice Demonstrates, When Congress Wants to Give the President**
 2 **Authority to Reorganize the Executive Branch, It Does So Through Legislation.**

3 From 1932 to 1984, Congress gave the President reorganization authority by passing and
 4 renewing a series of laws known as the Reorganization Acts. As the history of these laws
 5 demonstrates, when Congress believes that delegating its reorganization power to the President
 6 will promote efficiency in government, it knows how to make such a delegation while at the same
 7 time limiting the scope of that delegation to protect against presidential overreach.
 8

9 Broadly speaking, the Reorganization Acts authorized the President to reorganize
 10 executive agencies, but they required that he first submit a Reorganization Plan to Congress.
 11 Henry B. Hogue, Cong. Rsch. Serv., R42852, *Presidential Reorganization Authority: History,*
 12 *Recent Initiatives, and Options for Congress* 1 (2012) [hereinafter Hogue, *Presidential*
 13 *Reorganization*]. If Congress consented to the plan (by either inaction or express approval), then
 14 the plan became law. *Id.* at 1-2.
 15

16 Some of today’s major agencies were created by Reorganization Plans. For example, the
 17 Department of Health, Education, and Welfare (HEW)—the predecessor to the Department of
 18 Health and Human Services (HHS) and Department of Education—was established by President
 19 Eisenhower through a Reorganization Plan. See Reorganization Plan No. 1 of 1953, *in* 67 Stat.
 20 631; 20 U.S.C. § 3441 (transferring the educational functions of the HEW Secretary to the new
 21 Secretary of Education); *id.* § 3508 (changing HEW’s name to HHS). The Environmental
 22 Protection Agency (EPA) and the Federal Emergency Management Agency (FEMA) were
 23 similarly created by Reorganization Plans. See Reorganization Plan No. 3 of 1970, *in* 84 Stat.
 24 2086 (creating the EPA); Reorganization Plan No. 3 of 1978, *in* 92 Stat. 3788 (creating FEMA).

25 Congress passed the first iteration of expressly delegated reorganization authority in 1932
 26 at the urging of President Hoover. In a statement to Congress on “[t]he need for reorganization,”
 27

President Hoover emphasized that the “gradual growth” of the executive branch had led to “overlapping and waste,” and he believed that “the number of agencies can be reduced.” 75 Cong. Rec. 4181 (1932). He recommended that the “[a]uthority under proper safeguards . . . to effect these transfers and consolidations” should “be lodged in the President” via executive orders subject to Congress’s review. *Id.* at 4182; *see Statement About Congressional Action on Reorganization of the Executive Branch* (Feb. 24, 1932), *in Public Papers of the Presidents of the United States: Herbert Hoover* 74, 74 (U.S. Gov’t Printing Off., Wash. 1977) (“It is a most unpleasant task to abolish boards and bureaus and to consolidate others. . . . [Reorganization] should be lodged with the Executive with the right of Congress to review the actions taken.”). Congress subsequently passed legislation to permit the President to transfer the functions of one agency to another and consolidate the functions of agencies or departments, but it did not allow the President to abolish agencies or departments. *See An Act of June 30, 1932*, Pub. L. No. 72-212, §§ 403, 406, 47 Stat. 382, 413-15. Hoover lamented this limit on his authority. *See Statement About Signing the “Economy Act”* (June 30, 1932), *in Public Papers of the Presidents of the United States: Herbert Hoover, supra*, at 283, 283 (“the bill is so framed as to render abolition or consolidation of the most consequential commissions and bureaus impossible of consummation”).

Hoover thus continued to push for the expansion of reorganization authority. Hogue, *Presidential Reorganization, supra*, at 7-8. In 1933, with the Act set to expire in two years, Congress acquiesced in part, amending the Act to allow the President to abolish an executive agency (defined as “any commission, independent establishment, board, bureau, division, service or office in the executive branch of the Government”), but still prohibiting the abolition of an executive department. *See Act of Mar. 3, 1933*, Pub. L. No. 72-428, tit. IV, §§ 402, 403, 409, 47 Stat. 1489, 1517-19. At the same time, Congress explained that it was delegating this power to

1 the President only on a temporary basis due to the “serious emergency [that] exists by reason of
 2 the general economic depression” and an “imperative to reduce drastically governmental
 3 expenditures.” *Id.* § 401, 47 Stat. at 1517. After Hoover left office, President Roosevelt used the
 4 power to, among other things, consolidate agency functions into newly-designated agencies such
 5 as the Office of National Parks, Buildings, and Reservations, and the Division of Territories and
 6 Insular Possessions in the Department of the Interior, and abolish the United States Shipping Board
 7 and the Board of Indian Commissioners. *See* Hogue, *Presidential Reorganization, supra*, at 9.
 8

9 In 1937, after the authority granted in 1933 expired, Roosevelt requested renewed
 10 reorganization authority from Congress and pushed for even greater powers. *Id.* at 10. One of the
 11 proposed bills would have allowed the President to reorganize the executive branch without any
 12 involvement from Congress and without an expiration date. *See id.* This proposal sparked sharp
 13 rebukes from members of Congress who were deeply concerned about giving away their powers
 14 over departments and agencies in such a sweeping fashion. *See, e.g.*, 83 Cong. Rec. 4190 (1938)
 15 (“[L]eave final authority for changes in the Congress, where it belongs.”) (Sen. Brown); *id.* at 4195
 16 (“If the President could abolish or consolidate these agencies without authority of Congress you
 17 may rest assured he would not be here asking for authority. He cannot act [unless] we give him
 18 power which belongs to Congress.”) (Sen. Borah); *id.* at 4196 (“The powers which are proposed
 19 to be given by the bill . . . are yet the greatest legislative powers which exist in the Congress of the
 20 United States.”) (Sen. Johnson).
 21

22 The next year, Congress passed the Reorganization Act of 1939, Pub. L. No. 76-19, 53
 23 Stat. 561, a narrower version of the bills proposed the year before—indeed narrower still than the
 24 reorganization authority Congress had granted in 1933. The purpose of the Act was, among other
 25 things, to “increase the efficiency of the operations of the Government” and “to abolish such
 26

1 agencies as may not be necessary.” *Id.* § 1(a)(2), (4), 53 Stat. at 561. The Act permitted the
 2 President to reorganize federal agencies and departments through the submission of a
 3 Reorganization Plan (rather than executive order) to Congress, which would become law absent a
 4 concurrent resolution rejecting the Plan. *Id.* §§ 4-5, 57 Stat. at 562-63. This time, however,
 5 Congress prohibited the President from creating or abolishing executive departments or abolishing
 6 independent agencies in whole or in part. *See id.* § 3, 57 Stat. at 561-62. This Reorganization Act
 7 expired in 1941. *Id.* § 12, 57 Stat. at 564.

9 Over the ensuing decades, Congress passed additional Reorganization Acts, each with
 10 sunset dates, and at times modified the scope of the delegation of its reorganization power. Hogue,
 11 *Presidential Reorganization, supra*, at 22; *see, e.g.*, Reorganization Act of 1945, Pub. L. No. 79-
 12 263, 59 Stat. 613 (prohibiting the President from limiting the independence of an independent
 13 agency); Reorganization Act of 1949, Pub. L. No. 81-109, 63 Stat. 203 (allowing the President to
 14 create departments); Reorganization Act of 1977, Pub. L. No. 95-17, 91 Stat. 29 (prohibiting the
 15 President from creating or abolishing departments or abolishing an independent agency).
 16

18 Congressionally authorized presidential reorganization power came to an end in the 1980s.
 19 President Reagan requested the authority in 1981, but Congress did not renew the Act until 1984.
 20 *See* Reorganization Act Amendments of 1984, Pub. L. No. 98-614, 98 Stat. 3192 (codified at 5
 21 U.S.C. §§ 901-12).² The 1984 Act expired on December 31, 1984, *see* 5 U.S.C. § 905(b), and
 22 since then, the reorganization authority has not been renewed, despite requests from President
 23

26 ² In light of the Supreme Court’s then-recent decision holding the legislative veto
 27 unconstitutional, *Chadha*, 462 U.S. at 959, the 1984 Act changed how reorganization plans became
 28 law by requiring a joint resolution by Congress to approve the plans, *see* 5 U.S.C. § 906(a).
 Congress also passed a law to ratify all the previous reorganization plans that had become law
 through the previous procedure. Act of Oct. 19, 1984, Pub. L. 98-532, 98 Stat. 2705.

1 George W. Bush, President Obama, and even President Trump during his first term, Hogue,
 2 *Presidential Reorganization*, *supra*, at 31-32, 34; Exec. Order No. 13,781, 82 Fed. Reg. at 13959.
 3
 4

* * *

5 In sum, the history of the Reorganization Acts and longstanding practice demonstrate that
 6 the President does not have the power to create, restructure, or abolish federal departments or
 7 agencies absent congressional legislation authorizing him to do so. President Trump's executive
 8 order seeking to fundamentally reorganize the federal government without congressional consent,
 9 as well as his administration's efforts to implement it, should be enjoined to prevent further harm
 10 to our governmental structure, as well as to those "structural protections against abuse of power
 11 [that are] critical to preserving liberty," *Bowsher v. Synar*, 478 U.S. 714, 730 (1986).

CONCLUSION

14 For the foregoing reasons, this Court should grant Plaintiffs' Motion for Temporary
 15 Restraining Order.

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Respectfully submitted,

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